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IN THE

Supreme Court of the United States

OCTOBER TERM, 1938.

No. 453.

UNITED STATES TRUST COMPANY OF NEW YORK, as Executor u/w of George H. Bunker, deceased, Petitioner, vs. COMMISSIONER OF INTERNAL REVENUE, Respondent.	

PETITIONER'S BRIEF ON CERTIORARI.

I.

Opinions of Courts Below.

The opinion in the United States Board of Tax Appeals is listed but not reported in 36 B. T. A. 1271 (R. pp. 7-9). The opinion of the United States Circuit Court of Appeals for the Second Circuit is reported in 98 F. (2d) 734 (R. pp. 15-17).

II.

Jurisdiction.

The order of the Circuit Court of Appeals for the Second Circuit appealed from was duly entered August 10, 1938. Petition for writ of certiorari was duly brought pursuant to Section 240(a) of the Judicial Code as amended January 31, 1928, Chapter 14, Section 1 (45 Stat. 54); June 7, 1934, Chapter 426 (48 Stat. 926). A writ of certiorari was granted by order of this Court dated December 5, 1938 (R. p. 19).

III.

Statement of the Case.

The facts as stipulated and as found by the Board of Tax Appeals are as follows:

The decedent herein while serving in the U. S. Army during the World War took out a Government war risk insurance policy in the amount of $10,000 under the provisions of the War Risk Insurance Act and amendments and supplements thereto. The said policy was payable to decedent's widow at the time of his death. The Commissioner of Internal Revenue determined that, pursuant to Section 302(g) of the Revenue Act of 1926, the proceeds of this policy should be included in the gross estate of said decedent. By reason of the said inclusion of such proceeds in the gross estate, decedent's total life insurance exceeded the statutory exemption of $40,000 by $6,942.87. The deficiency assessment of $944.31 as determined by the Commissioner is the tax upon the said $6,942.87.

This determination of the Commissioner was sustained by the Board of Tax Appeals in a decision listed but not

reported in 36 B. T. A. 1271, and subsequently sustained by the United States Circuit Court of Appeals for the Second Circuit in an opinion reported in 98 F. (2d) 734. (R. pp. 15-17).

IV.

Question Presented.

The sole question presented is: Whether the proceeds of United States Government war risk insurance paid to the widow of insured as the named beneficiary in the policy should be included in the gross estate of the insured for the purpose of computing the Federal estate tax.

V.

Specification of Errors.

The Circuit Court of Appeals erred:

1. In holding that proceeds of Government war risk insurance, payable to the widow of decedent, are properly included in the gross estate of such decedent for the purpose of fixing the Federal estate tax on the estate of such decedent.

2. In failing to determine that the taxation of war risk insurance proceeds so paid to such beneficiary violates the constitutional rights of said beneficiary under the Fifth Amendment to the Federal Constitution.

3. In sustaining the determination of the Board of Tax Appeals that a deficiency of $944.31 exists in the Federal estate tax on the estate of said decedent as paid by the petitioner as executor of said decedent.

VI.

ARGUMENT.

Summary.

The petitioner claims:

I. That Congress intended by the passage of the War Risk Insurance Act to exempt the proceeds of such insurance from all taxation, *including* the Federal estate tax.

II. The intent of Congress to exempt the proceeds of war risk insurance from all taxation, including the Federal estate tax, would be defeated by the inclusion of such proceeds in the gross estate of a decedent for the purpose of determining the Federal estate tax, as such inclusion *must* result in the diminution of the said proceeds in the hands of the beneficiary.

III. The taxation of the proceeds of tax exempt war risk insurance violates the constitutional rights of the beneficiary of such a policy under the Fifth Amendment to the Federal Constitution.

POINT I.

Congress intended by the passage of the War Risk Insurance Act to exempt the proceeds of such insurance from all taxation, including the Federal Estate Tax.

Section 28 of the War Risk Insurance Act, in effect June 25, 1918 (40 U. S. Stat. at Large 609), amended June 7, 1924 (Chap. 320, Sec. 22, 43 Stat. 613, 38 U. S. C. A. 454), which was the controlling statute at the time of the death of decedent herein (Dec. 10, 1934) and at

he time of the payment of his war risk insurance policy, reads, in part, as follows:

> "The compensation, insurance, and maintenance and support allowance payable under Parts II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Parts II, III, or IV; *and shall be exempt from all taxation.*" (Italics ours.)

The decision of the Circuit Court of Appeals in this ase is the only decision in any Federal court determining he taxability under the Federal Estate Tax Law of the roceeds of war risk insurance.*

All the highest State courts to which the question has een presented have held that the words above italicized nean exactly what they say, i. e., the proceeds of war risk nsurance are not taxable under State transfer, inheritance r estate taxes because Congress by the passage of the bove quoted Act had made the proceeds of such insurance xempt from *all taxation,* including the said excise taxes. he reasoning of the State cases is equally applicable to ederal estate taxation (*Estate of Harris,* 179 Minn. 450, 29 N. W. 781; *Tax Commissioner* v. *Rife,* 119 Ohio St. 3, 162 N. E. 398; *Wanzel's Estate,* 295 Pa. 419, 145 A. 12; *Watkins* v. *Hall,* 107 W. Va. 202, 147 S. E. 876; *ross Estate,* 152 Wash. 459, 278 Pac. 414; *Succession of eier,* 155 La. 167, 99 So. 26; notes in 55 A. L. R. 613 *seq.,* 63 A. L. R. 394 *et seq.*).

It is true that in some of these cases the decisions were ased in part on the ground that the insurance proceeds d not pass from the decedent to the beneficiary under

* This question was not even presented to the Board of Tax Appeals til 1935 in the case of *Bankers Trust Company et al., Executors,* v. *Comssioner,* 33 B. T. A. 746.

State laws of descent and distribution, but rather under the contract and the Federal law. We submit, however, that the true *ratio decidendi* of the State cases was that Congress for reasons of public policy in war time had made the proceeds of such insurance exempt from all taxation, including all excise taxation. This point is well brought out in the words of Olsen, C., in *Estate of Harris*, 179 Minn. 450, at p. 454:

> "In view of the purpose of Congress to provide insurance, partly at government expense and in the nature of compensation, pension or bonus, partly for the benefit of the insured soldier, but largely for the benefit of his surviving dependents within the permitted class, it is no strained construction to hold that the legislative intent was to exempt the payments provided from all taxation, whether a property or an inheritance tax.'
>
> "The law is well established that an inheritance tax is not a property tax, and that exemption from property taxes does not exempt from an inheritance tax; but Congress no doubt has the power to exempt soldiers' compensation, pensions and allowances paid by the Federal government even from inheritance taxes, particularly so where same are paid under contract to a particular class of beneficiaries and do not pass by will or under state intestate laws."

In New York a few decisions of the lower courts (*Matter of Sabin*, 224 App. Div. 702; *Matter of Schaeffer*, 130 Misc. 436; *Matter of Dean*, 131 Misc. 125) have held that when the insurance proceeds do not pass to a named beneficiary of the policy, but, through the failure to name a beneficiary or through the death of the named beneficiary, fall into the general estate of the insured, they are taxable under the State transfer tax law. None of

the above cases reached the Court of Appeals. No case in that State has held taxable the proceeds of war risk insurance payable to a surviving named beneficiary.

The War Risk Insurance Act of 1917 (Oct. 6, 1917; 40 U. S. Stat. at Large 398 *et seq.*) did *not* contain any provision exempting the proceeds of war risk insurance from taxation, although compensation for death or disability payable under another article of said Act was specifically given such exemption (40 U. S. Stat. at Large 405). The War Risk Insurance Act of 1918, *supra*, passed on June 25, 1918, *did* make the proceeds of war risk insurance *exempt* from all taxation. It is significant that, following a message of President Wilson on May 27, 1918, urging the necessity for the enactment of a new revenue bill, public hearings were begun on June 6, 1918, by the Ways and Means Committee of the House of Representatives on the Revenue Act of 1918, which was the first revenue act to include the proceeds of life insurance payable to a named beneficiary in gross estate for the purpose of computing the estate tax. It is reasonable, therefore, to conclude the granting of tax exemption to the proceeds of war risk insurance by the War Risk Insurance Act of 1918 was due to the impending inclusion by the Revenue Act of 1918, *for the first time,* of such insurance proceeds in gross estate.

The Circuit Court of Appeals bases its decision in the instant case chiefly on *Plummer* v. *Coler,* 178 U. S. 115, and *Murdock* v. *Ward,* 178 U. S. 139 (R. p. 17), cases in which this Court upheld the taxation of Federal tax exempt bonds by transfer or succession laws, and on *Chase National Bank* v. *United States,* 278 U. S. 327, in which ordinary commercial life insurance was held taxable under the Federal Estate Tax Law.

As to *Murdock* v. *Ward* and *Plummer* v. *Coler, supra,* Day, J., in *Tax Commissioner* v. *Rife,* 119 Ohio St. 83 at 91 *et seq.,* has this to say:

> "Of course, such obligations reciting the ordinary relation of debtor and creditor between the government and the holder thereof are like any other property of a decedent, and pass as any other assets of his estate, and are therefore rightly subject to state inheritance tax. However, the proceeds of War Risk Insurance are a definite kind of property, differing from the ordinary property of a soldier's estate, and are in the nature of a beneficence or gratuity, bounty or pension, affecting the rights of the soldier and his dependents, upon one side, and the government of the United States, as a part of its war policy, upon the other side. This distinct class of property by Federal enactment is not subject to the claims of creditors, or taxation, and is solely for the benefit of the soldier and his dependents and next of kin. Such assets pass under and by virtue of the federal act, and the decisions in the cases of *Plummer's Exr.* v. *Coler, Compt., supra,* and *Murdock's Exr.* v. *Ward, supra,* do not relate to property of that character."

This decision affirms the decision in the same case before the Ohio Court of Appeals (27 Ohio App. 516) in which Cushing, J., at page 521, used the following pertinent language:

> "Counsel for the tax commission quote from *State ex rel.* v. *Ferris,* 53 Ohio St. 314, at page 325, 41 N. E. 579, 580 (30 L. R. A. 218), where the court said: 'Properly understood, it is not the right to transmit, but the right and privilege to receive, that is taxed.'

> "We do not question this statement, but, whether it is the property or the right of succession that is taxed, a part of the proceeds of the policy is thus being diverted from those to whom the government said it should go, and paid to the state of Ohio as a tax. In our view, the statute of the United States, which provides that this insurance shall be exempt from all taxation, controls."

Murdock v. *Ward* and *Plummer* v. *Coler* should further be distinguished from the instant case in that the Government bonds, the transfer of which these cases held to be subject to excise tax, were not exempt from the claims of creditors as are the proceeds of war risk insurance. Congress in granting this exemption from the claims of creditors to the proceeds of such insurance cannot have intended that the said exemption should not apply to the claim of an executor of the estate against a beneficiary of such a policy for recoupment of the amount of the tax paid by the estate, which would be the case if the proceeds of the said insurance policies are included in gross estate (as argued more fully in Point II, *infra*). The *Chase National Bank* case, *supra*, is also not controlling, dealing as it did only with ordinary commercial life insurance which may be irrevocably assigned by the policyholder and is subject to the claims of creditors, both of which features are entirely lacking, by Section 28 of the War Risk Insurance Act, *supra*, from war risk insurance. The insurance policy in the *Chase National Bank* case, of course, contained no tax exemption and the case is authority only for the proposition that ordinary commercial life insurance payable to a named beneficiary may be deemed part of the gross estate.

The essential difference between ordinary commercial life insurance and war risk insurance is clearly stated in

the opinion of Witmer, J., in *Cassarello* v. *United States*, 271 F. 486 at 491, aff'd C. C. A. (3rd Cir.), 279 F. 396, where he uses the following language in regard to the nature of war risk insurance:

> "Senator Williams, in charge of the bill in the Senate, made use of the following language:
>
> > 'It (the government) is not going into the insurance business at all. In the first place, it has confined its activities to the soldiers and the sailors in the service. In the second place, it confines the beneficiaries to the soldiers' and sailors' dependent families.' Cong. Record, vol. 55, pt. 8, Oct. 3, 1917, p. 7690.
>
> "Comptroller Warwick, in an opinion to the Secretary of the Treasury, July 5, 1919, said:
>
> > 'This insurance feature of the law is not an out-and-out contract of insurance on an ordinary business basis; neither is it a pension, but it partakes of the nature of both.'
>
> "Both Senator Williams and Comptroller Warwick here touched upon a vital distinction to be borne in mind, that this is neither a pension nor insurance. It partakes in some respects of the nature of both. It is not governed by the law of either. It is governed by the statute creating it, and must be construed in accordance therewith."

In the decision below the Circuit Court of Appeals also cited (R. p. 17) *Hammersley* v. *United States*, 16 F. Supp. 768 (C. Cls.), certiorari denied 300 U. S. 659, and *Phipps* v. *Commissioner*, 91 F. (2d) 627 (C. C. A. 10th), certiorari denied 302 U. S. 742, holding that gifts of United States bonds issued under a statute exempting them from all taxation except estate or inheritance taxes are includable in the measure of the gift tax. These cases add noth-

ing to the doctrine established by *Plummer* v. *Coler* and *Murdock* v. *Ward, supra,* i. e., that an excise tax is not a property tax. In the *Phipps* case, 91 F. (2d) 627, moreover, the holding that a tax might be levied on a gift of the bonds, although exempt from all taxation except "estate or inheritances taxes," was at page 629 predicated on the reasoning that the gift tax was "cognate" to the estate tax (citing *Burnet* v. *Guggenheim,* 288 U. S. 280 at 287), so that the above specific exception to the tax exemption in the words of the statute could be readily held to cover the gift tax as well.

The opinion of the Circuit Court of Appeals below suggests that because Congress re-enacted the War Risk Insurance Act without material change as to the tax exemption feature after the Treasury Regulations had held the proceeds of such insurance includable in gross estate, Congress by implication approved the said inclusion (R. p. 16). An examination of the Regulations in question, however, will disclose that war risk insurance is not referred to at all (see Art. 27, Treasury Regulations 70 and 80, Appendix, pp. 21, 22). The implication, if any, is a purely negative one, because the said articles of the various Regulations are silent as to the inclusion of war risk insurance in gross estate. The fact that the Treasury Regulations failed specifically to include in, or to exclude from, gross estate the proceeds of war risk insurance, clearly would not put Congress on notice that the Treasury Department was attempting to tax proceeds of insurance, which, we believe, Congress had intended to make entirely tax exempt, both as to direct and indirect taxes, by the War Risk Insurance Act.

The fundamental question in this case is what did Congress intend by enacting that the proceeds of war risk insurance should be "exempt from all taxation"? From

what taxes could Congress intend to give exemption? Until the death of the insured under a life insurance policy there is no taxable *res*. The only taxes which, therefore, could be imposed by the Federal Government on the proceeds of an insurance policy whose holder had died were estate or inheritance taxes, *excise taxes*, which Congress must have had in mind in granting the tax exemption, as the only taxes which could reduce the payment to the veteran's beneficiary which the Government had contracted to make. We submit, consequently, that because of the inherent nature of war risk insurance—insurance which as defined in *Cassarello* v. *United States* (*supra*) partakes of the nature both of a *pension* and of insurance—Congress never intended to levy such an excise tax upon the proceeds.

POINT II.

The intent of Congress to exempt the proceeds of war risk insurance from all taxation, including the Federal estate tax, would be defeated by the inclusion of such proceeds in the gross estate of a decedent for the purpose of determining the Federal estate tax, as such inclusion must result in the diminution of the said proceeds in the hands of the beneficiary.

The Circuit Court of Appeals has held in the instant case that, pursuant to Section 302 of the Revenue Act of 1926 (Feb. 26, 1926, Chap. 27, Sec. 302, 44 Stat. 70), the proceeds of war risk insurance are to be included in the gross estate of a decedent for the purpose of determining the Federal estate tax.

Under Section 315(b) of the Revenue Act of 1926 as amended [Feb. 26, 1926, Chap. 27, Sec. 315(b), 44 Stat. 80; June 6, 1932, Chap. 209, Sec. 803(c), 47 Stat. 280;

26 U. S. C. A. 427(b)] the transferee or beneficiary of any insurance policy included in the gross estate is personally liable up to the full amount of the policy for any unpaid estate taxes, *irrespective* of the proportion the proceeds of such policy may bear to the total taxable estate. The tax is a lien for ten years on any insurance included in the gross estate [Feb. 26, 1926, Chap. 27, Sec. 315(a), 44 Stat. 80; May 29, 1928, Chap. 852, Sec. 613(b), 45 Stat. 876; June 6, 1932, Chap. 209, Sec. 809, 47 Stat. 283; 26 U. S. C. A. 427(a)]. If, however, the executor pays the tax in full so that no lien any longer attaches in favor of the Government on the proceeds of such policy, the beneficiary still cannot keep the entire proceeds of the policy. Section 314(b) of the Revenue Act of 1926 (Feb. 26, 1926, Chap. 27, Sec. 314(b), 44 Stat. 79) specifically gives the executor the right in this case to recover from the beneficiary his or her proportion of the tax paid. It is a mandatory legal duty of an executor to enforce the right so given to him for the benefit of the estate, and in the instant case to collect the tax from the widow, should the decision of the Circuit Court be upheld. Once the proceeds of war risk insurance are included in gross estate, therefore, such proceeds are certain to be diminished in the hands of the beneficiary, either by suit of the Government or of the executor. It will be recalled that Section 28 of the War Risk Insurance Act specifically provides that the proceeds of such insurance are exempt from the claims of *creditors*. If the decision of the Circuit Court of Appeals in the instant case stands, under Section 314(b) of the Revenue Act of 1926 this provision is nullified by the right of action against such beneficiary given to the executor. Surely no such result as this was contemplated by Congress in enacting the said Section 28 of the War Risk Insurance Act.

POINT III.

The taxation of the proceeds of tax-exempt war risk insurance violates the constitutional rights of the beneficiary of such a policy under the Fifth Amendment to the Federal Constitution.

As shown in Point II, *supra,* the inclusion of the proceeds of war risk insurance in gross estate of a decedent inevitably results in the diminution of such proceeds in the hands of the beneficiary. Such diminution is a clear breach by the Government of the provisions in the original contract of insurance granting exemption from all taxation. This point is well expressed by Mr. Justice Brandeis in his opinion for a unanimous court in another case involving an attempted but unsuccessful breach by the Government of its contractual obligations to the beneficiaries of war risk insurance (*Lynch* v. *United States,* 292 U. S. 571 at 578-579):

> "But no power to curtail the amount of the benefits which Congress contracted to pay was reserved to Congress and none could be given by any regulation promulgated by the Administrator. * * *
>
> "The Fifth Amendment commands that property be not taken without making just compensation. Valid contracts are property, whether the obligor be a private individual, a municipality, a State or the United States. Rights against the United States arising out of a contract with it are protected by the Fifth Amendment. *United States* v. *Central Pacific R. Co.,* 118 U. S. 235, 238, and *United States* v. *Northern Pacific Ry. Co.,* 256 U. S. 51, 64, 67. When the United States enters into contract relations, its rights and duties therein are governed generally by the law applicable to contracts between private individuals."

CONCLUSION.

For the foregoing reasons it is respectfully submitted that the decision of the Court below that there is a deficiency in estate tax of $944.31 should be reversed.

Dated, New York, N. Y., December 30, 1938.

Respectfully submitted,

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APPENDIX.

Revenue Act of 1918, Sec. 402 (f)—40 U. S. Stat. at Large 1098:

(f) To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over $40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life.

Revenue Act of 1926, Sec. 302 (g)—Chap. 27, Sec. 302, 44 Stat. 70:

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible. * * *

(g) To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent on his own life; and to the extent of the excess over $40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life.

Revenue Act of 1926, Sec. 314 (b)—Feb. 26, 1926, Chap. 27, Sec. 314 (b), 44 Stat. 79:

(b) If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed

or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this sub-chapter that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution. *If any part of the gross estate consists of proceeds or policies of insurance upon the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds, in excess of $40,000, of such policies bear to the net estate. If there is more than one such beneficiary, the executor shall be entitled to recover from such beneficiaries in the same ratio.* (Italics ours.)

Revenue Act of 1926, Sec. 315 (a) (as amended)—Feb. 26, 1926, Chap. 27, Sec. 315 (a), 44 Stat. 80; May 29, 1928, Chap. 852, Sec. 613 (b), 45 Stat. 876; June 6, 1932, Chap. 209, Sec. 809, 47 Stat. 283, 26 U. S. C. A. 427 (a):

Upon gross estate. Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed.

Revenue Act of 1926, Sec. 315 (b) (as amended)—Feb. 26, 1926, Chap. 27, Sec. 315 (b), 44 Stat. 80; June 6, 1932, Chap. 209, Sec. 803 (c), 47 Stat. 280:

Section 315. (b) If (1) except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, the decedent makes a transfer, by trust or otherwise, of any property in contemplation of or intended to take effect in possession or enjoyment at or after his death, or makes a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (a) the possession ~~or enjoyment~~ of, or the right to the income from, the property, or (b) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom, or (2) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interests under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for an adequate and full consideration of money or money's worth.

U. S. Constitution, Fifth Amendment—U. S. C. A., Const., Part 2, pp. 483, 517:

No person shall * * * be deprived of life, liberty, or property without due process of law.

War Risk Insurance Act of 1917, Sec. 311—40 U. S. Stat. at Large 408:

That compensation under this article shall not be assignable, and shall be exempt from attachment and execution and from all taxation.

War Risk Insurance Act of 1918—June 7, 1924, Chap. 320, Sec. 22, 43 Stat. 613, 38 U. S. C. A. 454:

Assignability and Exempt Status of Compensation, Insurance, and Maintenance and Support Allowances.

The compensation, insurance, and maintenance and support allowance payable under Parts II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Parts II, III, or IV, and shall be exempt from all taxation. Such compensation, insurance, and maintenance and support allowance shall be subject to any claims which the United States may have, under Parts II, III, IV, and V, against the person on whose account the compensation, insurance, or maintenance and support allowance is payable.

The provisions of this section shall not be construed to prohibit the assignment by any person to whom converted insurance shall be payable under Part III of this chapter of his interest in such insurance to any other member of the permitted class of beneficiaries.

Treasury Regulations 70, promulgated under the Revenue Act of 1926:

Art. 27. *Insurance receivable by other beneficiaries.*

All insurance in excess of $40,000 receivable by beneficiaries other than the estate must be included in the gross estate of any decedent dying after the effective date of the Revenue Act of 1918, except that where the decedent died subsequent to the effective date of the Revenue Act of 1918, but prior to the effective date of the Revenue Act of 1924, the proceeds of insurance policies taken out by him upon his own life payable to beneficiaries other than to or for the benefit of the decedent's estate, are not includable in the gross estate if the beneficiary receiving the proceeds became such prior to the effective date of the Revenue Act of 1918, and thereby acquired, prior to the effective date of the Revenue Act of 1918, a vested interest in the proceeds of the policy, under the State law governing the rights or interest of the beneficiary.

Insurance payable to beneficiaries other than the estate, or for the benefit of the estate, need not be included in the gross estate of a decedent who died before the effective date of Title IV of the Revenue Act of 1918, but where, subsequent to September 8, 1916, such a decedent assigned a policy of insurance payable to or for the benefit of his estate, or caused it to be made payable to a specific beneficiary in contemplation of or intended to take effect in possession or enjoyment at or after his death, the entire proceeds should be included if such assignment or change in beneficiary did not amount to a bona fide sale for a fair consideration in money or money's worth. (See Articles 15 to 21, inclusive.)

The estate is entitled to only one exemption of $40,000 upon insurance receivable by beneficiaries other than the

estate. For example, if the decedent left life insurance payable to three such beneficiaries in amounts of $10,000, $40,000, and $50,000 (total $100,000), the full amount should be listed on the return and therefrom subtracted the $40,000 exemption as provided in Schedule C of Form 706. The word "beneficiaries," as used in reference to the $40,000 exemption, means persons entitled to the actual enjoyment of the insurance money.

Treasury Regulations 80 (1934 Ed.), Art. 27, promulgated under the Revenue Act of 1926, as amended by the Revenue Acts of 1928, 1932 and 1934:

Art. 27. *Insurance receivable by other beneficiaries.*

The statute requires the inclusion in the gross estate of the decedent of the proceeds of any policy, or the aggregate proceeds of all policies, not receivable by or for the benefit of decedent's estate, to the extent that such proceeds exceed $40,000, regardless of when the policy was or the policies were issued, if the decedent possessed at the time of his death any of the legal incidents of ownership.

The estate is entitled to only one exemption of $40,000 upon insurance receivable by beneficiaries other than the estate. For example, if the decedent left life insurance payable to three such beneficiaries in amounts of $10,000, $40,000, and $50,000 (total $100,000), the full amount should be listed on the return and therefrom subtracted the $40,000 exemption as provided in Schedule C of Form 706. The word "beneficiaries," as used in reference to the $40,000 exemption, means persons entitled to the actual enjoyment of the insurance money.